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SUBJECT: AZERBAIJAN: PLANS TO IMPROVE ELECTORAL
LEGISLATION AND PROCEDURES

REF: BAKU 353

Classified By: DEPUTY CHIEF OF MISSION DONALD LU PER 1.4(B,D)

¶1. (C) SUMMARY: With Azerbaijan's presidential election set for October 15, the GOAJ already is making technical preparations. Through dialogue with the Council of Europe's Venice Commission, the GOAJ is preparing changes to the electoral code and the law on freedom of assembly. Both pieces of legislation have received a positive assessment from Venice Commission experts, and are expected to be submitted to Parliament by April 20. The GOAJ plans to introduce a new electronic ballot-counting system that it believes will allow results to be reported by 2100 on election day. The Central Election Commission is working to prevent problems with voter registration, including establishing a new voter registration hotline and developing public service announcements for nationwide broadcast. While the technical preparations seem to be positive, problems in the overall political environment remain the critical obstacle to a free and fair October election. END SUMMARY

ELECTION LOGISTICS

¶2. (U) The GOAJ is moving full speed ahead with technical preparations for this year's presidential election, which has been set unofficially for October 15. (According to law, the GOAJ must announce the election date 120 days ahead of time.) Candidates may begin registering once the election date officially is announced (around June 17), and official campaign season will open 65 days prior to the election (around August 11). To date, the GOAJ has given no indication that the election will encompass anything other than a vote for president, and observers do not expect elections for empty parliamentary seats or any constitutional referenda to be added to the ballot.

VENICE COMMISSION RECOMMENDATIONS

¶3. (C) The GOAJ recently completed a dialogue with the Council of Europe's (COE's) Venice Commission on the law on freedom of assembly, and is wrapping up a dialogue on the electoral code. Both pieces of legislation potentially could influence significantly the pre-election environment and the electoral process. The Venice Commission has determined that the proposed draft amendments to the law on freedom of assembly meet European standards, and the body will issue a final opinion on the law once it is passed by Parliament. According to IFES Azerbaijan Country Director Dan Blessington, who has been involved in each session of the

dialogue on the electoral code, the two pieces of legislation will be submitted as a package to Parliament; he anticipates this will happen by April 20.

ELECTORAL CODE DISCUSSIONS

¶4. (C) Two Venice Commission experts, two experts from the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Blessington, and GOAJ representatives from the Presidential Apparat, Parliament, and the Central Election Commission (CEC) have participated in each electoral code discussion. Blessington characterized the CEC's position as "wanting to keep things as they are," while conceding to a few "cosmetic" changes. He noted that there had been some disagreement between the Presidential Apparat and the CEC on certain points, which he viewed as healthy debate.

¶5. (C) According to Blessington, the main point of discord between the Apparat and the CEC remains the complaints and appeals process. While the two essentially agree that an entity will be created within the CEC to handle all complaints and appeals, Blessington said the CEC wants clear oversight and appointment authority. Once an agreement on the language is reached, he said the draft would be ready for submission to Parliament. He noted that the current draft does not address the composition of election commissions, which remains the most controversial and politicized element of the electoral code. (NOTE: Most of the opposition parties call for representation on the election commissions equal to that of the ruling party, while the CEC maintains that the commissions should be comprised by professionals, rather than party representatives.)

¶6. (C) According to Jonathan Stonestreet, one of the ODIHR experts participating in the dialogue, the GOAJ has taken many actions to stall the process. For example, he said, the GOAJ participants in the dialogue introduced several potential changes separate from the Venice Commission and OSCE/ODIHR recommendations, which required much discussion, distracted the group from other important issues, and did not result in changes that would significantly improve the electoral process. Stonestreet noted that the GOAJ representatives often bristled at ODIHR's recommendations, likely a result of the GOAJ's displeasure with the OSCE/ODIHR reports on the 2005 parliamentary elections and subsequent re-run elections.

¶7. (C) Head of the Presidential Apparat's Legal Department, Shahin Aliyev praised IFES and the Venice Commission for their inputs throughout the dialogue on the electoral code. He claimed that only the issue of composition of election commissions remained unresolved, and said it was a political decision that must be made by Parliament, noting his belief that it was inappropriate for the GOAJ to make the decision. Aliyev admitted that the Presidential Apparat was under intense pressure on the issue from the opposition, the Venice Commission, and the ruling party -- on which he offered "sometimes they think they need to be holier than the Pope."

¶8. (U) According to the joint interim opinion adopted at the March 14-15 Venice Commission Plenary Session, the draft electoral code amendments address some of the Venice Commission and OSCE/ODIHR recommendations, which the opinion characterizes as a "positive development." Noted improvements include the prohibition of interference in election processes by GOAJ officials, and changes to the criteria for cancellation of candidate registration. However, the opinion notes several areas of concern, including the draft's failure to address the composition of election commissions, and inadequate provisions for the protection of electoral rights. The opinion also states that "the extent to which any amendments to the law can have a positive impact will ultimately be determined by the level of good faith and political will exhibited by state institutions and authorities responsible for implementing and upholding the law."

¶9. (C) Two Venice Commission experts, OSCE/Baku rule of law advisor Andreas Busch, and representatives from the Presidential Apparatus negotiated revisions to Azerbaijan's law on freedom of assembly. According to Busch, the new draft law will allow for rallies anywhere in Baku except a specific list of locations, including the Presidential Apparatus, Parliament, the Supreme Court, and constitutional courts. (COMMENT: If the GOAJ adopts and implements these changes, this would ease current restrictions on freedom of assembly. Since October 2006, public rallies have been limited to seven sites far removed from central Baku.) In the regions, the off-limits list would include the Executive Commissioners' offices and district courts. Busch said that in cases of rallies of less than 50 persons, the law would be more relaxed, allowing rallies to take place as close as ten meters from the off-limits locations.

¶10. (C) Busch believes that the new law on freedom of assembly will not change Azerbaijan's current permission system, requiring advance authorization from relevant local authorities for any public rallies. (NOTE: The Constitution provides for the right of citizens to gather peacefully "upon notification of corresponding government bodies in advance," but in practice, groups must receive advance permission from the Baku Mayor's Office in order to stage a rally.) While the permission procedure does not preclude the draft from meeting European standards, Busch said that the notification procedure was "preferred." He noted that the GOAJ had balked at suggestions to change this procedure. Presidential Legal Advisor Shahin Aliyev agreed that the new law will not necessarily prevent implementation problems, but he was confident that the Baku Mayor's Office would "take care" to implement this law appropriately. He advised against the Embassy engaging directly with the Mayor's Office, noting that the office is "very difficult."

¶11. (U) According to the Venice Commission opinion adopted during the December 14-15 Plenary Session, the draft amendments to the law on freedom of assembly include

significant improvements, and if Parliament adopts the amendments in their current form, the law will meet European standards. The opinion concludes that due implementation of the law will be "crucial," noting that "the law must be applied and interpreted by the administrative authorities, the courts reviewing their decisions and the police in a manner which respects the standards which have inspired it. They must show a presumption in favor of assemblies." In its private, internal assessment of the draft amendments, the OSCE/Baku Office assessed that continued dialogue with the GOAJ - and training - will be essential to ensure that the law is fully implemented. (NOTE: The OSCE, with support from the U.S., currently is conducting public order management training, which emphasizes police officials' human rights obligations.)

EARLY ANNOUNCEMENT OF ELECTION RESULTS PLANNED

¶12. (C) Presidential Advisor for Social and Political Issues Ali Hasanov said that President Aliyev has instructed the GOAJ to create a new system of counting ballots that will be more transparent and timely, and that considerable funds already have been allocated for this project. Instead of the polls closing at 1900 as in past years, Hasanov said for this election, they will close at 1800. He explained that each precinct will be equipped with computer equipment, allowing for instant reporting of results to the CEC. According to Hasanov, President Aliyev specifically instructed that counting should be concluded by 2000, and the CEC should declare a winner by 2100.

¶13. (C) The Embassy has noted our concerns that announcing results so soon would not be logistically possible, particularly because polling stations will be using new,

unfamiliar technology. Hasanov responded that certainly not all of the returns will be in by 2100, but because Azerbaijan is a small country, returns from at least 75 percent of polling stations should be in by that time, which he said was enough to determine the winner. (COMMENT: Computerized submission of election results will not necessarily be more transparent or accountable. This makes effective implementation of the USG's planned Parallel Vote Tabulation -- which has a standard margin of error of only 0.35 percent -- critical to deterring electoral fraud and identifying areas of GOAJ manipulation.)

CEC WORKING TO PREVENT VOTER REGISTRATION PROBLEMS

¶14. (C) According to CEC International Relations Department Head Rovzat Gasimov, the CEC already has taken many steps to prevent voter registration problems -- which have been an issue in previous elections -- from occurring during this year's election. Gasimov explained that the CEC established a voter registration hotline on February 1. He labeled the hotline's success "a test for the CEC's reputation," proudly noting that the hotline had received 57 calls the day it opened. As of May, Gasimov said that the hotline would expand beyond voter registration issues to accept all election-related calls. Gasimov said the CEC was producing a series of public service announcements on voter registration, one of which already has been broadcast on national TV stations. According to Gasimov, the CEC was in the process of mailing out notification cards to "nearly everyone on the voter registration list;" the backside of the cards includes instructions on voting procedures. In addition, Gasimov said the CEC was exploring the possibility of installing touch-screen monitors in front of each of the 125 Constituency Election Commission (ConEC) offices, on which citizens can check whether they are registered to vote.

¶15. (C) Gasimov said the CEC was planning a number of voter education activities, particularly targeting first-time voters. According to Gasimov, the CEC was in the process of training ConEC and Precinct Election Commission members in election day procedures. The CEC would expand these trainings to other issues, he said, once Parliament had adopted the electoral code amendments. Gasimov noted that the anticipated amendment eliminating envelopes from the voting procedures would make work much easier at each polling station. He dismissed a February report from the Yeni Azerbaijan newspaper that a number of leaders from small parties would be ineligible to register as presidential candidates because they had not repaid government loans, which had financed their 2003 campaigns. Gasimov said that

these individuals would be permitted to run, but could not receive financial support from the GOAJ for this campaign.

COMMENT

¶16. (C) Although the GOAJ has resisted international recommendations to change the composition of the election commissions (recommendations that COE experts privately admit are impractical given the current, poisonous relations between the opposition and ruling party), the GOAJ overall seems to have made an effort to ensure that the electoral code and the law on freedom of assembly meet international standards. However, the real test will be implementation of these new laws. Over the past several years, there has been a marked gap between the letter of the law and its implementation. While the GOAJ seems to be on the right track in terms of technical election preparations, broader political problems -- including severe restrictions on freedom of media and freedom of assembly, as well as limits on political participation -- present an obstacle to the fair and free conduct of the October presidential election. We will continue to engage the GOAJ on the need for broader democratic reform in the run-up to the election, and to support assistance programs to spur the necessary reforms.

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